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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

GOV'T OPP. DEF. MOT. EXCLUDE UNDISCLOSED EVID.  
CR 08-399 PJH

The Court should deny the defendant’s Motion in Limine to Exclude undisclosed evidence. The Court did not impose a discovery deadline in this case. In its pretrial order, the Court required the parties to comply with the Federal Rules of Criminal Procedure, and also required the government to comply with *Brady v. Maryland*, 373 U.S. 83 (1963) and *United States v. Agurs*, 427 U.S. 97 (1976). (July 31, 2008 Order for Pretrial Preparation for Criminal Jury Trial.) Therefore, contrary to the defendant’s assertion (Def. Mot. Exclude Undisclosed Evid. at 1:19-21), the parties were not required to disclose all evidence that the deadline for filing motions *in limine*.

The government has complied with all of its discovery obligations, including its obligations under Rule 16 to produce evidence to the defendant. The government is aware that its duty to disclose evidence is a continuing duty and will produce additional evidence to the defendant, if any exists, immediately after the government receives it. Given the short time period between indictment and trial in this case – less than three months – it is inevitable that a small number of documents would be discovered after the parties filed their motions in limine.

Finally, the defendant will not be harmed by the disclosure of additional documents, and the Court should not continue the trial. This case is straightforward and does not present complex legal or factual issues. If the defendant shows that he was harmed by disclosure of additional evidence, then the Court can continue the trial. The defendant's assertion that he will object to a continuance is irrelevant because the speedy trial deadline in this case will be no earlier than October 20, 2008, six weeks after the trial is scheduled to start.

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/S/

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